IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 846, 847, 1066 and 1067 of 1997
with
Civil Applications No.3439, 3441, 3430 and 3435 of 1997
and
Civil Application No. 3429 of 1997
in
First Appeal No. 1066 of 1997
(for condonation of delay)

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

SHARIF BAUDINBHAI

Versus

DAMYANTIBEN AMBALAL BHATT

Appearance:

MR RAJNI H MEHTA for appellants.
MR SHAKEEL A QURESHI for Respondents in FA Nos. 846, 847 and 1066 of 1997.
MR B.M. MANGUKIA for respondent in FA No.1067/97.

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.M.KAPADIA

Date of decision: 06/04/98

ORAL JUDGEMENT (Per A.M. Kapadia, J.):
For the reasons stated in the Civil Application No. 3429 of 1997, the delay of 20 days caused in filing the First Appeal is condoned. Rule is made absolute with no order as to costs.

First Appeals No. 847, 1066 and 1067 of 1997 are admitted. Service of notice is waived by Mr. Shakeel A. Qureshi for original claimants in First Appeals No. 847 and 1066 of 1997 and Mr. B.M. Mangukia waives service of notice on behalf of the original claimant in First Appeal No. 1067 of 1997 (First Appeal No. 846 of 1997 is already admitted by order dated 17.7.1997).

In this batch of four appeals jointly filed by the driver, owner and insurer of the offending vehicle involved in the accident, challenging the common judgment and award dated 10.10.1996 passed in a group of seven Motor Accident Claim Petitions bearing Nos. 219, 210, 338, 324, 314, 339 and 319 of 1994, by the Motor Accident Claims Tribunal, Bhavnagar, common question of assessment of compensation is involved and, therefore, they are being disposed of by this common judgment.

On the fateful day, that is, in between 16.2.1994 and 17.2.1994, at about 2.30 A.M., the ill-fated luxury bus bearing No. GJ 4 T 9958 with passengers therein was proceeding on Bhavnagar-Mahuva Coastal Highway. When the said bus reached near Bhensla Hanuman Temple, near Mahuva Town, a public carrier was parked on its correct side with back lights and rear stop signal indicators on. Stone boundary was also made around the carrier. Driver of the luxury bus, while overtaking that stationary truck which was parked on its correct side of the road, dashed the luxury bus with the Tractor No. GJO 8688 which was coming from the opposite direction and caused the accident giving rise to the claim petitions. As a result of the accident, passengers sitting in the luxury bus received various severe bodily injuries while one person named Maganbhai who was occupying the seat in the tractor received fatal injuries and succumbed to the same during the course of treatment. So far as the passengers of the luxury bus who sustained injuries are concerned, six persons filed claim petitions for recovery of compensation claiming various amounts under the head of mental pain, shock and sufferings and economic loss while heirs and legal representatives of the deceased Maganbhai also filed claim petition claiming dependency benefits as they are the heirs and legal representatives of the deceased. All of them filed the claim petitions against the driver, owner and insurer of the luxury bus, alleging

that the driver of the luxury bus was solely negligent and responsible for causing the accident.

Before the Tribunal, the driver and owner elected to remain absent though duly served. However, insurer of the luxury bus, Oriental Insurance Company Limited, which was impleaded as opponent No.3, contested the claim petitions by filing detailed written statements.

It may be appreciated that all the claim petitions arose out of one and the same accident and, therefore, they were consolidated and evidence in common was recorded and disposed of by the Tribunal by delivering a common judgment.

A number of witnesses were examined by the parties and after having considered both the oral and documentary evidence, the Tribunal held that the accident had occurred as a result of the rash and negligent driving on the part of the driver of the luxury bus and because of his careless and negligent driving the accident had taken place which claimed life of Maganbhai who was occupying seat in the tractor while six passengers who were travelling in the luxury bus received severe bodily injuries which has resulted into permanent partial disablement. Therefore, issue of negligence was decided against the driver of the offending luxury bus. The Tribunal considered the evidence on the point of income of the deceased and determined the dependency benefit available to the heirs and legal representatives of the deceased. It also considered the mental pain, shock and sufferings suffered by six injured claimants and considering prospective income, awarded compensation to the claimants of each claim petition as below:

MACP No.	Amount claimed	Amount awarded
324/94	Rs.99,100	Rs.67,000
210/94	Rs.1,50,000	Rs.1,14,000
339/94	Rs.75,000	Rs.60,000
219/94	Rs.5,50,000	Rs.2,76,000
338/94	Rs.2,50,000	Rs.2,00,000
314/94	Rs.70,000	Rs.70,000
319/94	Rs.25,000	Rs.20,000

Feeling aggrieved by the aforesaid judgment and award, the appellants/ opponents before the Tribunal have knocked the doors of this Court by filing Appeals in four cases only with the aids of the provisions of Section 173 of the Motor Vehicles Act, 1988 ('the Act' for short hereinafter) and challenged the legality and validity of

the award passed in following Motor Accident Claim Petitions:

M.A.C.P. No. 219 of 1994
M.A.C.P. No. 338 of 1994
M.A.C.P. No. 314 of 1994
M.A.C.P. No. 210 of 1994

In this batch of appeals, we have heard learned advocate Mr. R.H. Mehta for the appellants/original opponents and learned advocates Mr. Qureshi and Mr. Mangukia for respondents/original claimants.

The pith and substance of their submissions centres around the quantification of compensation awarded to the claimants in each petition. According to Mr. Mehta, the Tribunal has considered dependency value of the deceased at a higher rate without any documentary proof and, therefore, dependency benefit is required to be reduced and accordingly the compensation to be awarded to the heirs and legal representatives of the deceased. Similarly, in other three injuries cases also the Tribunal has considered the income of the injured at a higher rate and awarded compensation of future economic loss without proof of the income of the injured claimant. Therefore, the amount awarded to the injured claimant is also required to be substantially reduced.

As against this, learned advocates Mr. Qureshi and Mr. Mangukia supported the award made by the Tribunal. According to them, the Tribunal has considered the income which can be said to be just and reasonable and awarded compensation as per the law settled by the judgments of various High Courts. Therefore, judgment and award passed by the Tribunal in the claim petitions are not required to be interfered with by this Court and the appeals may be dismissed.

In view of the aforesaid submissions, the only question which calls for determination is about the quantification of the compensation. It is a settled proposition of law that Tribunal has to award just compensation which should not be a source of profit to the victim of the road accident or dependents of the deceased or punitive to the person liable. When we talk of just compensation, we talk of compensation which the Tribunal thinks is fair, equitable, reasonable and morally right. That is, in consonance with the Public policy, no matter, if it is a personal injury case or a case arising out of the fatal accident, some guess work from the available material can be done and is permissible but it must be remembered that

in such cases, arithmetic may be a good servant but would be a bad master.

In this connection, a reference may be invited to the judgment in the case of Maharashtra State Road Transport Corporation vs. Rajrani, 81 BLR 241, wherein the Bombay High Court has observed thus:

> "That the standard must be an objective standard and although it may involve some guess work, hypothetical consideration of sympathy and solatium should not enter into assessment of damages, appear to be relevant principles applicable to personal injuries."

A reference may be invited to the case of C.K. Subramonia Iyer v. Kunhi Kuttan Nair, 1970 ACJ 110 (SC) wherein it is observed by Honourable the Supreme Court thus:

> "In assessing damages, the Court must exclude all considerations of matter which rest in speculation or fancy though conjuncture to some extent is inevitable."

In the case of Vinodkumar Shrivastav v. Ved Mitra Vohra reported in 1970 ACJ 189 (M) the Madhya Pradesh High Court has observed thus:

> "Quantum - Principles for assessment compensation must be reasonable - It should be assessed with moderation - Regard must be had to comparable cases - The sums awarded should be conventional These rules should be conventional - These rules should be followed to achieve uniformity.
>
> It is only by way of adherence to these self-imposed rules that the Court can decide like cases in like manner and bring about a measure or predictability of their awards. These considerations are of great importance if administration of justice in this field is to command the respect of the community."

As observed by the Supreme Court in the case of Concord of India Insurance Co. Ltd. v. Nirmala Devi, 1980 ACJ 55 (SC), 'the determination of the quantum must be liberal not niggardly since the law values life and limb in the country in generous scales.'

To say the least, we should not out-shylock the Shylock

in doing justice or fixing the quantum of compensation.

From these decisions referred to hereinabove, it is clear that the emphasis is on the threefold principles (i) that the award should be moderate, just and fair and it should not be oppressive to the respondent, (ii) the award should not be punitive, exemplary and extravagant and (iii) as far as possible similar cases must be decided similarly. The community at large may not carry the grievance of discrimination.

Bearing in mind the aforesaid legal principles laid down by various High Courts and the Supreme Court, we may now advert to the actual evidence brought on record and decide whether the compensation awarded to the claimants of each petition is just, reasonable and fair or is it excessive or extravagant which requires to be reduced.

It may be appreciated at this stage that so far as the finding of the negligence is concerned, the appellants/ opponents have not challenged the same. The negligence on the part of the driver of the luxury bus is established and in this regard no submission is canvassed by the learned advocates. Therefore, we have to examine the only question of the quantum of compensation assessed in each appeal.

Firstly, we shall deal with First Appeal No. 846 of 1997 which has been filed by the insurance company challenging the award passed in MACP No. 219 of 1994. The claim petition was filed by Damyantiben Ambalal Bhatt to recover compensation of Rs.5,50,000 as she sustained fracture of tibia and fibula of her left leg and fracture of jaw as well. The Tribunal has observed that she had taken intensive treatment at Civil Hospital, Ahmedabad, as an indoor patient and was also operated upon thrice and as a result of fracture she has sustained 60% permanent partial disability of the affected limb. The injured claimant was doing tailoring work at the relevant time and the Tribunal has considered the monthly income of the injured claimant at Rs.2000. Considering all aspects the Tribunal has awarded compensation in following break up:

Rs.	86,000	For future economic loss due to disability.
Rs.	35,000	For mental agony, pain, shock and suffering as she sustained three fracture injuries and also she has undergone wiring operation.
Rs.	50,000	For medical expenses, transportation

charges, special diet and other misc. expenses and attendance charges.

Rs. 50,000 Actual loss of income as she was bed ridden for a pretty long time and could not do her work.

Rs. 25,000 For loss of income of husband of the injured who attended her during prolonged treatment and has suffered actual loss of income.

Rs. 20,000 For future operations to be performed.

Rs. 10,000 For loss of 10 teeth which she has lost in the incident.

Rs.2,76,000

After having given our anxious thought to the assessment made by the Tribunal, we are of the opinion that the Tribunal has awarded compensation definitely on a higher side. There is no evidence to prove the loss to the tune of Rs.25,000 incurred by the husband of the claimant by way of services rendered to the injured claimant. There is also no evidence to the effect that actual loss incurred by the original claimant is to the extent of Rs.50,000. Without there being any cogent and reliable evidence an amount of Rs.50,000 has been awarded by the Tribunal to the claimant by way of medical expenses. In view of this position, we are of the opinion that the compensation awarded on the above three heads is required to be interfered with. We are at loss to understand how the Tribunal has arrived at the said figures. Therefore, we propose to reduce the compensation and instead of Rs.2,76,000 we award Rs.1.75 lacs in lump-sum by way of compensation, which, according to us, can be said to be just, reasonable and moderate and would take care of the injured claimant throughout remaining span of her life. Therefore, the appeal is required to be partly allowed by modifying the award passed by the Tribunal by awarding an amount of Rs.1.75,000/- plus interest and proportionate cost.

It is required to be mentioned here in this appeal that the appellants had deposited an amount of Rs.25,000 before this Court along with the appeal and also deposited Rs.1,47,821 before the MACT, Bhavnagar as per the directions given by this Court while passing order in Civil Application No. 3439 of 1997 wherein order for transfer of Rs.25,000 from this Court to the Tribunal was also passed. Therefore, we simply direct the appellants to deposit the remaining amount of compensation within a period of six weeks hereof before the MACT Bhavnagar.

First Appeal No. 847 of 1997 has arisen from the judgment and award passed in MACP No. 338 of 1994 which was filed by the heirs and legal representatives of deceased Maganbhai who was occupying the seat in the tractor and on receiving severe injuries, succumbed to the same during the course of treatment. The Tribunal awarded Rs.2,00,000 by way of dependency benefits against the claim of Rs.2,50,000. The deceased was an unmarried boy of 21 years at the relevant time and he was doing agricultural work and was earning Rs.2000. The deceased was having 30 bighas of land as per the land revenue record. Therefore, the Tribunal has determined the income of the deceased at Rs.3000 and after deducting personal expenses, considered the dependency benefit of Rs.1000 per month and the annual dependency benefit was worked out at Rs.12,000 per annum and the Tribunal applied 15 years purchase factor and thus awarded Rs.1,80,000. To that the Tribunal added Rs.20,000 under the head of conventional amount and awarded Rs.2,00,000 in all.

So far as the aforesaid finding arrived at by the Tribunal is concerned, we are of the opinion that the Tribunal has assessed the prospective income without any corroborative evidence. It is true that income of a person holding agricultural land can be assessed as manager or supervisor of the land. Therefore, in this case also we propose to reduce the award to Rs.1,50,000 instead of Rs.2,00,000 as awarded by the Tribunal.

Under these circumstances, this appeal is also required to be partly allowed by modifying the award to the extent as indicated hereinabove and resultantly the heirs and legal representatives of the deceased are entitled to Rs.1,50,000 as compensation with proportionate costs and interest instead of Rs.2,00,000 as awarded by the Tribunal.

In this case also the appellants had deposited Rs.25,000 before this Court at the time of filing of the appeal and also deposited Rs.1,77,268 before the MACT, Bhavnagar as per order passed by this Court in Civil Application No. 3441 of 1997 wherein the order for transmission of Rs.25,000 was also passed. Therefore, the appellants are directed to deposit the remaining amount of compensation, as awarded by this Court, within a period of six week hereof before the MACT, Bhavnagar.

In First Appeal No. 1066 of 1997 the award passed in MACP No.314 of 1994 is impugned. The MACP was filed by the injured applicant Natubhai Devjibhai Dabhi for

recovery of compensation of Rs.70,000. The injured applicant was a press reporter of "Pen Man" daily. The injured claimant had received fracture of tibia and fibula left M/3. There was abnormal mobility in antro posterior place and shortening of 1" of left leg and 1.5" wasting of left thigh. The knee movement was restricted. He has sustained 24% permanent partial disablement in respect of the affected limb. In this case the Tribunal has determined compensation at Rs.80,000 under various heads but since the claim was restricted to Rs.70,000 the Tribunal awarded Rs.70,000 only to the injured claimant. So far as this appeal is concerned, we cannot point out anything wrong committed by the Tribunal while assessing the compensation payable to the injured applicant. We, therefore, fully confirm the compensation determined by the Tribunal and hence this appeal being devoid of any merits, is required to be dismissed. Hence, we confirm the award passed by the MACT, Bhavnagar and dismiss the appeal. Thus, the claimant is entitled to the compensation of Rs.70,000 with costs and interest thereon.

So far as this First Appeal is concerned, the appellants had deposited Rs,.25,000 before this Court at the time of filing of the appeal and Rs.12,000 was paid to the injured before the MACT Bhavnagar as per the order passed under the principle of no fault liability under Section 140 of the Act. The amount deposited before this Court was also transmitted to the Tribunal. Therefore, the appellants are hereby directed to deposit the remaining amount before the Tribunal within six weeks from today to satisfy the award made against them.

First Appeal No. 1067 of 1997 is taken out against the judgment and award passed in MACP No.210 of 1994, in which the injured claimant Vijaykumar Harilal Upadhyaya was awarded Rs.1,14,000 as compensation by the Tribunal against the claim of Rs.1,50,000. In this case also the Tribunal has observed that the injured claimant has received fracture of tibia and fibula which is malunited. Besides this the claimant had also sustained injuries above right cubital fossa and scar over lower forehead. As a result of the injuries the claimant suffered 30-35% permanent partial disability. The Tribunal has also observed that the injured claimant was initially treated at Mahuva Municipal Hospital and thereafter intensive treatment was taken at Sir T Hospital where he was admitted as indoor patient and the treatment was continued for six months. The claimant was aged 24 years at the relevant time and was a chemist with Sona Fibres and was earning Rs.1000 per month. The Tribunal

considered the prospective income at Rs.2500 and determined the compensation under various heads and awarded an amount of Rs.1,14,000. Regarding the amount of Rs.20,000 awarded for medical expenses, special diet, transportation, attendant charges and other miscellaneous expenses and also the amount of Rs.15,000 awarded by way of loss of actual earnings, we are of the opinion that the amount awarded under the above two heads was without any corroborative evidence. Therefore, when there was no evidence to that effect the Tribunal ought to have awarded only a lump-sum amount under the above said heads. So far as the amount awarded under the heads of future economic loss, mental pain, shock and sufferings, and future operation charges are concerned, we are of the opinion that they are justified. Therefore, we propose to reduce the amount of compensation by Rs.14,000 and hence the claimant is entitled to Rs.1,00,000 with proportionate costs and interest, instead of Rs.1,14,000 as awarded by the Tribunal. Hence, in the result, this appeal is also required to be partly allowed by modifying the amount awarded to the extent mentioned hereinabove.

So far as this appeal is concerned, the appellants have deposited Rs.25,000 alongiwth the appeal before this Court and also deposited Rs.1,26,000 before the MACT Bhavnagar. The amount of Rs.25,000 deposited before this Court is ordered to be transmitted to the MACT Bhavnagar. The appellants are directed to deposit the remaining amount with proportionate costs and interest before the MACT Bhavnagar within a period of six weeks hereof.

In the premise, all the above appeals except First Appeal No.1066 of 1997 succeed partly and accordingly they are partly allowed while First Appeal No.1066 of 1997 is dismissed. The judgment and award passed by the Tribunal is modified to the aforesaid extent. We further clarify that the claimants are entitled to the following amount as per the modified award with interest and proportionate cost as awarded by the Tribunal:

MACP No.	F.A. No.	Amount awarded by Tribunal	Modified award
219/94	846	Rs.2,76,000	Rs.1,75,000
338/94	847/97	Rs.2,00,000	Rs.1,50,000
314/94	1066/97	Rs. 70,000	Rs. 70,000
210/94	1067/97	Rs.1,14,000	Rs.1,00,000

Award to be drawn up as modified. The Tribunal shall pass appropriate order with regard to apportionment and disbursement of the amount with regard to the remaining

amount that may be deposited by the appellants as per modified award in each claim petition. There shall be no order as to costs in these appeals.

In view of the above order passed in the First Appeals, Civil Applications No. 3439, 3441, 3430 and 3435 of 1997 are disposed of. Rule and notice, as the case may be, is discharged. No order as to costs.